

(3)

C. 6714 (1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

SECOND APPEAL No. 490 OF 2004

Single Bench

APPELLANTS

PLAINTIFFS

- :
1. Yogesh Kumar son of Burajmal, aged about 50 years, resident of Gudhiyari, Tah: & Dist: Raipur (C.G).
 2. Smt. Durga Devi, wife of Yogesh Kumar, aged about 42 years, resident of Gudhiyari, Tah: & Dist: Raipur (C.G).

P.R. No.

Presented by Sri. M. P. Sande

dated

Versus

RESPONDENTS

DEFENDANTS

- :
1. Smt. Noona Bai, widow of late Bhagela Satnami, aged about 50 years.
 2. Siyaram, son of Bhagela Satnami, aged about 30 years.
 3. Shiv Kumar, son of Bhagela Satnami, aged about 23 years.
 4. Shiv Kumari, daughter of Bhagela Satnami, aged about 22 years.
 5. Chandrika Prasad, son of Bhagela Satnami, aged about 21 years.
 6. Parabhe, son of Bhukau Satnami, aged about 60 years.

All residents of Gudhiyari, Raipur, Tah. & Dist: Raipur (C.G)

7. State of Chhattisgarh.

SECOND APPEAL U/S 100 of the CODE OF CIVIL PROCEDURE

Suit and First Appeal valued at Rs. 71.00/-

Court Fees Rs. 715/-

Second Appeal valued at Rs.

71.00/-

Court Fees Rs. 715/-

M. P. Sande
Adv.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 490 of 2004

Yogesh Kumar & another

Versus

Smt. Noon Bai & others

POST FOR JUDGMENT ON 10th JULY 2006

Sd/-
DHIRENDRA MISHRA
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 490/2004

APPELLANTS
PLAINTIFFS

YOGESH KUMAR AND ANOTHER

VERSUS

RESPONDENTS
DEFENDANTS

SMT. NOONA BAI AND OTHERS.

SHRI V.D. BAJPAI LEARNED SENIOR COUNSEL FOR THE
APPELLANTS.

JUDGMENT

(Delivered on 10-07-2006)

Dhirendra Mishra, J

The appellants have preferred this Second Appeal under Section 100 of the Code of Civil Procedure against the judgment and decree dated 16.8.2004 passed by 11th Additional District Judge (FTC) Raipur in Civil Appeal No. 19-A/2004 arising out of the judgment and decree dated 17.9.1997 passed by Civil Judge Class-II Raipur in Civil Suit No. 249-A/1995 proposing the following substantial questions of law for adjudication:

SUBSTANTIAL QUESTIONS OF LAW

- (i)- Whether the judgment and decree passed by the Courts below is perverse and based on improper appreciation of evidence?
- (ii)- Whether the finding of the judgment of the Court below are infirm in nature and whether valuable evidence pertaining to the title of the suit property has been ignored by the courts below?

(iii)- Whether according to Section 53 of the Indian Contract Act, 1872, the decree passed in favour of the appellants will be applicable on the other parties those are creating the interest in the suit premises?

(iv)- Whether the lower appellate court on the basis of evidence on record was right in dismissing the suit of the plaintiffs and whether the appellate court was right not to allowing the appeal of the appellants?

(v)- Any other substantial question of law to be formulated at the time of motion hearing or admission?

2. Case of the plaintiffs before the trial Court was that on 24.11.1984 an agreement was entered into between the plaintiff No.1 and defendants No. 1 to 5 with the consent of defendant No.6 with respect to the land bearing Khasra No. 987/4 Patwari Halka No. 107, area 27 decimal situated in village Gudhiyari for a consideration at the rate of Rs. 3000/- per acre and advance of Rs. 500/- was paid by plaintiff No.1 to defendants 1 to 5. As per the said agreement the defendants were to obtain No Objection Certificate from the office of Land Ceiling Authority and within one month of obtaining the said No Objection Certificate sale deed was to be executed either in the name of plaintiff No.1 or in the name of any other person nominated by him. Thereafter, further payments were made to defendants No.1 and 2. No Objection Certificate was obtained by plaintiff No.1 on 28.6.1988. However, the defendants refused to execute sale deed after obtaining remaining consideration of Rs. 4,700/- and in the aforesaid circumstances the suit was filed. Defendant No.6 in his written statement denied the execution of the agreement and stated that as he was not the party to the agreement he was not bound by it because he had not received any consideration from the plaintiffs in lieu of the land. Defendant No.6 further stated that he was never called upon by the plaintiff No.1 to execute the sale deed. The land in question is a precious as per the market value. According to defendant No.6, he never appointed defendants No. 1 and 2 as attorney for the purpose of execution of the agreement. Defendants No. 3 to 5 were minor and the suit was barred

by law of limitation. Defendants No. 2, 4 and 5 in their written statement denied that they ever gave consent for the execution of the sale deed. Since, defendants No. 3 to 5 were minor there was no legal necessity to transfer their land. The land in question is the ancestral property and defendants have no legal right to execute the agreement for sale and therefore, the agreement is illegal and void. On the basis of the pleadings of the respective parties the trial Court framed the issues and after recording the evidence dismissed the suit by recording a finding that the agreement dated 24.11.1984 was executed by defendants No. 1 to 5 but defendant No.6 had not entered into the said agreement. The plaintiffs had paid a consideration of Rs. 3,400/- and was ready and willing to perform his part of contract. Defendant No.6 had not appointed defendants No. 1 and 2 as attorney to execute the agreement and he had in fact refused to sell the property vide his notice dated 3.9.1986. Though defendants No. 3 to 5 were minor, they did not challenge the agreement in question after attaining majority during the pendency of the suit. The suit was not barred by law of limitation and since the agreed property was the joint property of defendants No. 1 to 5, defendant No.6 and others as per the revenue records and the same had not been partitioned and there was no consent of the holders to sell the property, the same has not been sold. The agreement was not executed by defendants No.1 and 2 as Karta of the family for the benefit of the suit property or legal necessity and as such the defendants No. 1 to 5 had no authority to sell the suit land and therefore, the plaintiffs cannot get the decree of specific performance of the agreement of Ex. P-1 and thus the suit was dismissed. The appeal preferred by the appellants/plaintiffs against the judgment and decree passed by the trial Court has also been dismissed.

3. Learned counsel for the appellants submits that both the courts below after recording a finding that defendants No. 1 to 5 entered into an agreement to sell the suit land after obtaining a consideration and the plaintiff was ready and willing to perform his part of the contract, ought to have decreed the suit at least to the extent of their share in the

property and therefore the questions of law as described above arise for consideration. In support of the argument reliance is placed on the judgments of Hon'ble Supreme Court in the matter of Sardar Singh Vs. Smt. Krishna Devi and another reported in AIR 1995 SC 491, in the matter of Kartar Singh Vs. Harjindar Singh and others reported in AIR 1990 SC 854 and in the matter of Surinder Singh Vs. Kapoor Singh (dead) through LRs and others reported in (2005) 5 SCC 142. He further relied on the judgment of the M.P. High Court in the matter of Gurudinomal Vs. Dolatram reported in MPWN.206.

4. The courts below have dismissed the suit by recording a finding that the land in question was jointly recorded in the name of defendants No. 1 to 6 and others as per the revenue record and the plaintiff has failed to establish that the agreement was executed by defendants No. 1 to 5 as Karta of the joint family for the benefit of the property or for legal necessity of the family and the property in question has not been partitioned between the members and in the aforesaid circumstances the defendants No. 1 & 2 had no legal authority to execute the agreement.
5. In the matter of Surinder Singh (supra) the Supreme Court on the basis of admitted facts that the appellant and his sister had equal share in the property, upheld the judgment of the High Court that the decree for Specific Performance could be granted in favour of the respondents in respect of the share of the appellant subject to his right to apply for partition of the property for getting his share demarcated. In the matter of Kartar Singh (supra) also on the basis of admitted facts that the defendant having share in the property contracted to sell the whole property i.e. his share and that of his sister. In these circumstances since the sister's share was separate and severable from each other there was a valid contract with respondent in respect of his share in the property. In the matter of Gurudinomal (supra) the share of the persons to the agreement has been well defined and in the aforesaid circumstances the suit for Specific Performance in respect of the share of the property of the defendant was decreed.

However, in the instant case the property in question is jointly recorded in the name of defendants No. 1 to 6 and others, there is neither any pleading nor any evidence of partition/share of defendants No. 1 & 2 in the said property, there is a concurrent finding of fact that the land in question was sold by defendants No. 1 & 2 not for the benefit of the property or legal necessity and in the absence of well defined share of defendants No.1 & 2 in the property they had no legal authority to transfer the land. The above finding is a finding of fact concurrently recorded by both the courts below.

6. In view of the aforesaid discussion this Court of the view that no substantial question of law as described above, arises for adjudication of this appeal.
7. In the result the appeal is devoid of substance and the same is liable to be dismissed. It is accordingly dismissed ^{at} as the motion stage itself.

Sd/-
DHIRENDRA MISHRA
Judge